IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5476 of 2007()

CRIME NO.3551/2005 OF CITY TRAFFIC POLICE STATION KOCHI CITY

PETITIONER: ACCUSED

SUNNY,S/O. YAKOOB, AGED 45
THATATHIL VEEDU
VYAZHATHUMALIBHAGOM, VELIYANADU DESOM
EDAKKATTUVAYAL VILLAGE
KANAYANNOOR TALUK

BY ADV. SRI.S.NIRMAL KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY
C.I, OF POLICE, CITY TRAFFIC POLICE STATION,
KOCHI CITY REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
ERNAKULAM

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5476 of 2007

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Dated this the 11th day of September, 2007

ORDER

Petitioner faces allegations in a prosecution for offences punishable, interlia, under section 304A IPC. The petitioner had entered appearance and was enlarged on bail and the case was listed for trial on 21.08.07 and 22.08.07. Most unfortunately, the learned counsel for the petitioner (same counsel appears before the courts below and before this Court) as well as the petitioner allegedly heard the date of posting as 22.8.07. When they appeared on 22.8.07, the case had already been adjourned to 3.11.07, on 21.8.07, after a warrant of arrest was issued against the petitioner by the learned Magistrate. The petitioner prays that directions under Section 438 may be issued in his favour. His absence was not intentional, it is submitted. The petitioner is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner.

2. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceeding. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the

learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

5. There shall be a further direction that the warrant of arrest issued against the petitioner shall not be executed till 19.9.07. The petitioner shall, in the meantime, appear before the learned Magistrate and seek regular bail.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE